

REMARKS

Claim Amendments

Claims 22, 24-31, and 33-42 remain pending and under examination. Applicant amends claims 31, 41, and 42, as indicated above. Applicant also cancels claim 40 without prejudice or disclaimer of its subject matter. Support for the amendments to claims 31 and 42 may be found in the specification at, for example, p. 7, ll. 19-24.

Office Action

Applicant respectfully traverses the rejections made in the Office Action¹ mailed April 1, 2011 (“Office Action”), wherein the Examiner took the following actions:

- (a) rejected claim 41 under 35 U.S.C. § 112, second paragraph;
- (b) rejected claims 31, 40, and 42 under 35 U.S.C. § 101; and
- (c) rejected claims 22, 24-31, and 33-42 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0145982 (“*Talpade*”) in view of U.S. Patent Application Publication No. 2004/0032857 (“*Tannan*”).

I. Claim Rejection under 35 U.S.C. § 112

In rejecting claim 41 under 35 U.S.C. § 112, second paragraph, the Office Action alleged that the claim feature “resulting from the application of the method” “is unclear.” *See* Office Action, p. 3. In response to this rejection, and without conceding to the Office Action’s allegations, Applicant amends claim 41 as indicated herein. Accordingly, Applicant deems the rejection under 35 U.S.C. § 112, second paragraph, overcome and requests its withdrawal.

II. Claim Rejection under 35 U.S.C. § 101

The Office Action rejected claims 31, 40, and 42 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. *See* Office Action, pp. 4-5. In response, and

¹ The Office Action contains a number of statements reflecting characterizations of the cited art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement of characterization in the Office Action.

without conceding to Office Action's allegations regarding non-statutory subject matter, Applicant amends claims 31 and 42 as indicated herein. The cancellation of claim 40 renders its rejection moot. Accordingly, Applicant requests withdrawal of the rejection.

III. Claim Rejection under 35 U.S.C. § 103(a)

Applicant requests reconsideration and withdrawal of the rejection claims 22, 24-31, and 33-42 under 35 U.S.C. § 103(a) as being unpatentable over *Talpade* in view of *Tannan*. The cancellation of claim 40 renders its rejection moot.

The Office Action has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. *See M.P.E.P. § 2141(II)*, citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In particular, the Office Action has not properly determined the scope and content of the prior art. Specifically, *Talpade* and *Tannan* do not teach or suggest what the Office Action attributes to them, and thus do not teach or suggest each and every feature of at least independent claims 22 and 31.

Claim 22 recites a combination including "selectively associating, using the computer, at least one of the plurality of simulated network users with at least one quality of service profile," and "dynamically varying the services to the at least one simulated network user, using the computer, by setting values of different parameters defining the at least one quality of service profile associated with the at least one simulated network user." The references, whether taken alone or in combination, fail to disclose or suggest at least these features.

First, *Talpade's* simulator does not receive any information identifying a "simulated network user," and thus cannot perform the above quoted feature. Instead, inputs to *Talpade's* simulator **only** "include traffic classes and their respective source models, topology information

about network 100 and one or more QoS criteria for applications, as selected by the ISP administrator.” *See Talpade*, ¶¶ [0021]. Indeed, the “Response to Arguments” section of the Office Action cites similar language of *Talpade* as allegedly teaching “selectively associating at least one of the plurality of simulated network users with at least one quality of service profile.” Office Action, p. 2. But, neither the cited portions, nor *Talpade* as a whole, teach or suggest that *Talpade*’s simulator receives any information specifically identifying a simulated network user. To the extent the Office Action appears interpret an “application” as being analogous to a simulated network user, such an interpretation is incorrect. In fact, Applicant’s specification distinguishes an “application” from a simulated network user. *See, e.g.*, Specification, p. 2, 1. 29 - p. 3, 1. 5.

Moreover, *Talpade* fails to teach or suggest “dynamically varying the services to the at least one simulated network user by setting values of different parameters defining the at least one quality of service profile associated with the at least one simulated network user,” as recited in claim 22, and similarly in claim 31. In alleging that *Talpade* teaches or suggests “dynamically varying the services to the at least one simulated network user by setting values of different parameters defining the at least one quality of service profile associated with the at least one simulated network user,” the Office Action cites to paragraphs [0025] and [0038] of *Talpade*. *See* Office Action, pp. 3 and 6. But, the cited portions refer to actions taken by an ISP “[o]nce the simulation runs are complete,” and not actions that occur during simulation. *See Talpade*, ¶ [0028]. That is, the cited portions refer to actions an ISP administrator may take based on “[results] determined during these three simulations.” *Id.* *Talpade*, however, does not teach or suggest altering variables during simulation.

In contrast, *Talpade* discloses “the simulation may run multiple times, such as three times, using the same simulation variables,” and “following each run of the simulation, the

simulation variables may be altered and the simulation may be repeated.” *Talpade*, ¶ [0037].

And, therefore, in describing “the steps for simulating traffic … in accordance with methods and systems **consistent with the present invention**,” operating the simulator in an iterative manner may be reasonably interpreted to be limited to running the simulator “multiple times.” See *Talpade*, ¶¶ [0025] and [0034]-[0038] (emphasis added).

Moreover, the Office Action’s citation to *Tannan* fails to cure the deficiencies of *Talpade*, because *Tannan* also fails to teach or suggest at least the claimed “selectively associating, using the computer, at least one of the plurality of simulated network users with at least one quality of service profile,” and “dynamically varying the services to the at least one simulated network user, using the computer, by setting values of different parameters defining the at least one quality of service profile associated with the at least one simulated network user,” as recited in claim 22, and similarly in claim 31.

Instead, *Tannan* discloses “[m]ethods, apparatus, and systems are provided to simulate a network carrying a heterogeneous mix of traffic in order to assess the performance of the network.” *Tannan*, Abstract. Specifically, *Tannan*’s methods concern simulating a network carrying both packet and switch-based traffic. See *Tannan*, ¶ [0006]. Like *Talpade*’s simulation parameters, *Tannan*’s parameters do not consider a QoS associated with a simulated network user. Instead, *Tannan*’s simulation parameters include, for example, the location of the cell, transmitter height, total number of base station channels, and the total number of channels reserved for packet-switched traffic. See *Tannan*, ¶¶ [0026]-[0027]. *Tannan* also fails to teach or suggest “dynamically varying the services to the at least one simulated network user by setting values of different parameters defining the at least one quality of service profile associated with the at least one simulated network user,” as recited in claim 22, and similarly in claim 31.

Thus, *Tannan* does not cure the deficiencies of *Talpade*. Independent claims 22 and 31 are not obvious over *Tannan* and *Talpade*, whether these references are taken alone or in any combination. Independent claims 22 and 31 should therefore be allowable. Dependent claims 24-30, 33-39, 41, and 42, should also be allowable at least by virtue of their dependence from one of base claims 22 and 31, as well as because they recite additional features not taught or suggested by the cited references. Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection.

IV. Conclusion

Applicant respectfully requests reconsideration and withdrawal of the rejections. Pending claims 22, 24-31, and 33-42 are in condition for allowance, and Applicant requests a favorable action.

If there are any remaining issues or misunderstandings, Applicant requests that the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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